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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212669
Party	Defendant DISH Network L.L.C.
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Attachments	1-10-2014 Dish Answer to Notice of Opposition - 91212669 (3).pdf(27397 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/732,373  
Published in the Official Gazette on May 28, 2013

COX COMMUNICATIONS, INC.,  
CSC HOLDINGS, LLC, and  
TIME WARNER CABLE INC.,

Opposers,

v.

DISH NETWORK, L.L.C.,

Applicant.

Opposition No. 91/212,669  
Mark: DISH ANYWHERE  
Filed: September 18, 2012  
Published: May 28, 2013

**ANSWER TO NOTICE OF OPPOSITION**

Applicant Dish Network, L.L.C. (“Applicant”), by and through its undersigned attorneys, hereby answers the Notice of Opposition in the above-identified proceeding. Applicant’s responses to the allegations of Opposers, Cox Communications, Inc., CSC Holdings, LLC, and Time Warner Cable Inc. (collectively, “Opposers”), are based upon actual knowledge of its own actions and information and belief with respect to all other matters. For reference, the original paragraphs in the Notice of Opposition are reproduced here, followed by Applicant’s response. The paragraph numbers below correspond to those in the Notice of Opposition.

1. Opposers and Applicant are each telecommunications companies that provide, among other things, television broadcasting services, delivery of pre-recorded video content, and a variety of interactive television services to subscribers.

Applicant's Answer

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to Opposers and as such denies them. Applicant admits that it provides, among other things, television broadcasting services, delivery of pre-recorded video content and a variety of interactive television services to its subscribers.

2. On September 18, 2012, Applicant filed an application to register DISH ANYWHERE, App. Ser. No. 85/732,373, covering "Digital video recorders; Electronic apparatus and devices for controlling access to pay-television services; communications equipment, namely, set-top boxes for receiving video programming; television receivers; satellite receivers; set-top boxes; universal remote controls for home electronic devices, namely, televisions, VCRs, DVD players, digital video recorders, satellite receivers, stereo receivers, and stereo amplifiers; computer hardware and software for streaming audio, video, image and data information to a variety of network devices, namely, personal computers, tablets, mobile phones, personal digital assistants (PDA), and stand-alone hardware decoders, namely, audio decoders and video decoders; electronic devices, namely, digital media streaming devices; computer software for operating hardware, translating digital signals, transmitting digital data and signals, electronic messaging, data management, hardware and network security, and access to the internet for use in wireless communications systems; computer programs utilizing radio communications networks, local communication networks, and wide area communication networks; computer programs for facilitating wireless communication; computer programs for recording, processing, receiving, reproducing, transmitting, modifying, compressing, broadcasting, merging or enhancing data for use in wireless communications; compression software for voice, data, image, graphic, audio, and video transmissions; computer application software for mobile phones and tablets, namely, software for streaming audio, video, image and data information to a variety of network devices, namely, personal computers, tablets, and mobile devices; communications software, namely, system application and operating software for residential and commercial satellite receiver systems; communications software, namely, networking software for residential and commercial audio, video and telephony systems. satellite receivers, modems, routers, hubs, cabling, and plugs, all for residential and commercial receiver systems; telecommunications equipment, namely, smartphones, wireless and mobile telephones for voice, data, image, graphic, audio, video and fax communications and electronic mail; hand- held devices for wireless access to

global communications networks; PC tablets, personal digital assistants, telephones, telephone modems and radio modems; accessories for mobile phones, namely, batteries; battery chargers; electric cigarette lighter adapters for land vehicles; hands- free headsets for mobile phones and hand-held devices; carrying cases and belt clips for electronic equipment, namely, mobile phones and hand-held devices” in Class 9 based upon an intent to use the term in commerce.

Applicant’s Answer

Admitted.

3. On information and belief, Applicant has used the applied-for term in connection with goods, including digital video recorders and other communications equipment, and services which enable television programming and other content to be broadcast and transmitted to, or accessed from, a variety of display devices including computers, mobile devices, and televisions to subscribers.

Applicant’s Answer

Applicant has used the mark DISH ANYWHERE in connection with Applicant’s goods and services including smartphone and tablet software and services which enable television programming and other content to be accessed from, a variety of display devices including computers and mobile devices; otherwise denied.

4. On information and belief, Applicant intends to use the applied-for term in connection with goods, including digital video recorders and other communications equipment, and services which enable television programming and other content to be broadcast and transmitted to, or accessed from, a variety of display devices including computers, mobile devices, and televisions to subscribers.

Applicant’s Answer

A complete list of the goods upon which Applicant intends to use the mark DISH ANYWHERE is provided in the Application; otherwise denied.

5. Others have used the term ANYWHERE in connection with goods and services other than Applicant's, including digital video recorders and other communications equipment, and services which enable television programming and other content to be broadcast and transmitted to, or accessed from, a variety of display devices including computers, mobile devices, and televisions to subscribers.

Applicant's Answer

Applicant lacks sufficient information to admit or deny the allegations in this paragraph and therefore denies them.

6. Applicant was aware prior to publication of the applied-for term that others had used ANYWHERE in connection with goods and services other than Applicant's, including digital video recorders and other communications equipment, and services which enable television programming and other content to be broadcast and transmitted to, or accessed from, a variety of display devices including computers, mobile devices, and televisions to subscribers.

Applicant's Answer

Denied.

7. Applicant is aware that others are continuing to use the term ANYWHERE in connection with goods and services other than Applicant's, including digital video recorders and other communications equipment, and services which enable television programming and other content to be broadcast and transmitted to, or accessed from, a variety of display devices including computers, mobile devices, and televisions to subscribers.

Applicant's Answer

Denied.

8. ANYWHERE is descriptive of the applied-for goods and related services, including digital video recorders and other communications equipment and services which enable television programming and other content to be broadcast and transmitted to, or accessed from, a variety of display devices including computers, mobile devices, and televisions to subscribers, or it is a term which has become the common name of such goods and services.

Applicant's Answer

Denied.

9. ANYWHERE has not become distinctive of Applicant's goods in commerce.

Applicant's Answer

Applicant applied for the mark DISH ANYWHERE and not ANYWHERE alone;  
otherwise denied.

10. ANYWHERE is so highly descriptive so as not to be capable of acquiring distinctiveness for Applicant's goods.

Applicant's Answer

Applicant applied for the mark DISH ANYWHERE and not ANYWHERE alone;  
otherwise denied.

11. ANYWHERE does not function as a trademark but is merely informational as applied to Applicant's goods.

Applicant's Answer

Applicant applied for the mark DISH ANYWHERE and not ANYWHERE alone;  
otherwise denied.

12. ANYWHERE is a generic term for the applied-for goods and related services, including digital video recorders and other communications equipment and services which enable television programming and other content to be broadcast and transmitted to, or accessed from, a variety of display devices including computers, mobile devices, and televisions to subscribers.

Applicant's Answer

Applicant applied for the mark DISH ANYWHERE and not ANYWHERE alone;  
otherwise denied.

13. If Applicant were granted registration of DISH ANYWHERE without a disclaimer of ANYWHERE, Applicant would obtain certain statutory rights, including *prima facie* rights, to the exclusive use of ANYWHERE, all to the damage of Opposers.

Applicant's Answer

Applicant admits that if it were granted registration of DISH ANYWHERE, Applicant would obtain certain statutory rights, including *prima facie* rights, to the exclusive use of DISH ANYWHERE in connection with the goods listed in the registration; otherwise denied.

14. Registration by Applicant of Application Serial No. 85/732,373 without a disclaimer of ANYWHERE would be inconsistent with Opposers' and others' right to use ANYWHERE descriptively, informationally, or generically.

Applicant's Answer

Denied.



## **DEFENSES**

### **Unclean Hands<sup>1</sup>**

3. Opposer Cox is barred from seeking the relief requested in the Notice of Opposition by virtue of unclean hands. For example, Cox has itself applied for a mark containing "anywhere" for similar services without disclaiming "anywhere."

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<sup>1</sup> Although not currently ripe for counterclaims, to the extent the Board considers the term ANYWHERE to be descriptive and/or generic for the claimed goods and services such that a disclaimer is required, Applicant will seek to oppose Cox's application. Cox's application, which has yet to publish for opposition, similarly includes in a composite mark the term ANYWHERE for similar goods and services to the Application and do not include a disclaimer of ANYWHERE.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed and that Application Serial No. 85/732,373 proceed to registration.

Respectfully submitted,

KENYON & KENYON LLP

Dated: January 10, 2014

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served by first class mail, postage prepaid, on this 10th day of January, 2014 to:

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Date: January 10, 2014

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